

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 175 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

IDAR TALUKA CO.OP.AGRICULTURALPRODUCE PROCESS & SALE SOC.LTD

Versus

AGRICULATURAL PRODUCE MARKET COMMITTEE

Appearance:

MR JAYANT PATEL for Petitioners

MR GR UDHWANI for MR KG VAKHARIA for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/12/96

ORAL JUDGEMENT

The petitioner no. 1 is a registered co-operative society and the petitioner no. 2 is its Chairman. The members of the petitioner-society are the agriculturalists of the Idar taluka. The petitioners in this petition has made a challenge to the action of the respondents, its agents and/or servants from demanding and recovering the market fees from the petitioner society on sale of its ginned cotton or unginned cotton

in the market on behalf of its members and to refund the amount which the respondent has illegally recovered. The amount sought to be recovered from the petitioner-society for the year 1981-82, 1982-83 and 1983-84 has been given in Annexure-B to the petition. The petitioner's contention is that the market fee is not leviable on the sale of ginned and unginned cotton as it is the property of the members of the society and the sale is made on behalf of its members.

On the other hand, the learned counsel for the respondent contended that this petition is not maintainable as the petitioners have an alternate remedy provided under section 48 of the Gujarat Agricultural Produce Market Act, 1963. It has next been contended that the market fee is leviable by the respondent on the sale effected by the petitioners on the ginned and unginned cotton. Replying to the contentions raised by the learned counsel for the respondent, learned counsel for the petitioner contended that the question of availability of an alternative remedy has not been raised by the respondent in reply to the special civil application and as such this plea cannot be permitted to be raised. It has next been contended that this writ petition has been admitted and after so many years, the petitioners may not be relegated to the remedy of revision as provided under section 48 of the Act aforesaid.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Section 48 of the Act, reads as under:

Section-48:- "Powers to State Government to call for proceedings of market committee and to pass order thereon.- The State Government may at any time call for and examine the proceedings of the Director or of any market committee for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by the Director or the market committees. In any case in which it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may pass such order thereon as it thinks fit."

The petitioners have come up with the grievance that it was not within the competence of the respondent

to demand and recover the market fees from them on the agricultural produce i.e. ginned and unginned cotton. So against the action of collecting the levy of the market fees on the sales which are effected by the petitioners of the agricultural produce i.e. ginned and unginned cotton, the proper course for the petitioners was to approach the State Government in the matter. The State Government has sufficiently wide powers in this matter. The learned counsel for the petitioners states that it is purely a legal question and as such the petitioners may not be relegated to the remedy of revision. This contention is devoid of any substance. The revisional authority can go into the question of fact as well as law and the remedy of the revision is an effective remedy provided under the statute itself. It is the case of the respondent that under the Act, the levy of tax on the sales of the ginned and unginned cotton by it, cannot be challenged directly in writ petition and for such a grievance the petitioners have been provided with an alternative remedy. The petitioners have filed this petition in the year 1986 and, admittedly, the petitioners were paying and the respondent were recovering market fees on agricultural produce, as aforesaid, since 1981-82. For all these years, the petitioners were paying the market fees and at no stage earlier to the filing of this petition had made any grievance. In such cases, where the petitioner have not raised objections against the demand and recovery of the market fees from them on the sales of agricultural produce i.e. ginned and unginned cotton, the proper and appropriate course for them is to approach the revisional authority under section 48 of the Act. It is true that merely because the petitioners have not raised any word against the demand and recovery of the tax, they are not debarred from raising this issue, but the question is only of the forum. In a case where the petitioner has an alternate remedy available under the statute for the adjudication and resolving of the grievances made by them then the petitioners should have availed of that remedy. In such cases, this court should discourage such tendency of the litigants to approach directly to this court in such matter where alternate remedy is provided to them. The litigants should first avail the alternate remedy provided to them and only when the ultimate decision comes against them, there may be a justification to approach this Court. It is true that this petition is admitted in the year 1986. It is, however, equally true that for all these years, the petitioners are paying the market fees to the respondents. It is now only the question of adjudication on the plea of the petitioners whether the market fees is leviable on the sale made by

them on the ginned and unginned cotton in the market yard of the respondents or not. For that the only remedy available to them is to approach the State Government under section 48 of the Act and not to this Court under Article 226 of the Constitution of India. This petition has been admitted ex-parte and now it has come up for final hearing.

The respondents have a right to raise the objection of the availability of alternative remedy to the petitioners which has been raised by the respondent at the first available opportunity. The objections of availability of alternative remedy is not raised in the reply by the respondents, but it is open to the respondents to raise this objection during the course of the argument. It is a pure question of law on which this Court is not required to go on the question of facts and more so, the disputed questions of facts. The court has to see whether any remedy is available under the Statute or not for which a reference has to be made to the relevant provisions of the Statute. The learned counsel for the petitioners is unable to satisfy the court that the remedy of revision as provided under section 48 is not available, and further that the said remedy is not adequate and efficacious. The learned counsel for the petitioners has only apprehension that now after 10 years, if this matter is sent to the revisinal authority than the revisional authority may dismiss the revision application on the ground of delay and latches. It has further been contended by the learned counsel for the petitioners that though in the special civil application the interim relief has not been granted, in Letters Patent Appeal filed by the petitioners, the Division Bench of this Court has ordered that in case ultimately the petitioners succeed in this petition, the matter regarding refund of the amount of fees collected from them will be decided and appropriate orders may be passed at the time of final disposal of the special civil application. Though the learned counsel for the petitioners has not produced on record the order passed by the Division Bench of this Court in Letters Patent Appeal but the learned counsel for the respondent has not disputed the same. Learned counsel for the respondent contended that even if the petitioners succeed in the petition, this court may not make the order of refund of the fees deposited by the petitioners. Before passing the order of refund of the amount of fees deposited by the petitioners for all these years, the petitioners have to establish as a fact to the satisfaction of the court that the burden of the fees paid has not been passed on to the purchaser or third parties. Unless that is

established and satisfied, the petitioners will not be entitled to the refund of the amount. I do not consider it appropriate at this stage, when I am of the opinion that the petitioners have to go to the revisional authority, to give any finding on the merits of the contentions raised by the learned counsel for the parties. However, both of the apprehensions made by the petitioners' counsel are of no substance. When this court is relegating the petitioners to the remedy of the revision under section 48 of the Act and, the revisional authority has to decide the matter on merits. The revision application that may be filed by the petitioners will not be dismissed on the ground of delay and laches.

Merely because this petition has been admitted, I

fail to see any justification in the contention of the learned counsel for the petitioners that this Court cannot relegate the petitioners to the remedy of the revision. It depends on the facts of each case and the matter is to be considered with reference to the case on hand. As stated earlier, it is the case of the respondents that when the appropriate remedy has been provided to the petitioners under the Statute for the redressal of the grievances made by them in the special civil application, it is always advisable that this court may not entertain such matter before the decision of the authority provided under the statute for resolving and adjudicating the dispute.

So far as the second apprehension is concerned, it is suffice to say that the Division Bench's order, if any, made has to be given effect. In case, the claim of the petitioners is found favour by the revisional authority, the revisional authority has to pass an appropriate order of refund of amount of fees which has been demanded and collected from the petitioners. However, while passing such an order, the authority is to go on the question whether the petitioners are entitled for the refund of the amount of fees which has been collected from them or not, and while deciding this question, the revisional authority shall go on other vital question that the refund could have been made only where the burden of fees collected from the petitioners has not been passed on by them to the purchasers and/or a third person. The petitioners have to prove and establish the fact about the loss as well as burden of the fees collected from them has not been passed on to the third person.

In the result, this special civil application is dismissed only on the ground of alternate remedy being

available to the petitioners. The petitioners are at liberty to file revision before the State Government under the provisions of section 48 of the Act. In case, the revision application is filed by the petitioners within a period of one month from the date of the receipt of the certified copy of this order, then the revisional authority shall decide the same on merits. It is made clear that the revisional authority will not dismiss the revision application on the ground of limitation, delay or laches. It is further made clear that the revision application be decided on merits after giving full opportunity of hearing to both the petitioners and the respondents. In case, the revisional authority does not find any merits in the revision application, then it is expected of the revisional authority to pass a reasoned order and the copy of the same be sent to the petitioner no. 1 by registered AD post. In case, the prayer made by the petitioners is accepted, then the revisional authority will pass an appropriate order on the question of refund of the amount fees demanded and collected from the petitioners in accordance with the law and after taking into consideration the observations made in the judgment. It is expected of the authority to decide the revision application filed by the petitioners within a period of three months from the date of receipt thereof. Rule is discharged with no order as to costs.
